

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	CASE NO. 1:05-CR-128
)	
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
vs.)	
)	<u>OPINION AND ORDER</u>
ADELBERTO MARRERO,)	
)	
Defendants.)	

Before the Court is Defendant Adelberto Marrero's Motion to Reconsider, **Doc #: 328**. Marrero seeks reconsideration of this Court's denial of his Motion to Reduce or Modify a Term of Imprisonment. Doc #: 326, 327. Marrero argues his sentence should be reduced because he is no longer considered a career offender. Doc #: 328 at 1. Marrero supports this contention by arguing that under *United States v. Malone*, 646 F. App'x 454 (6th Cir. 2016) his aggravated burglary conviction is no longer a crime of violence. Doc #: 328 at 2.

Marrero fails to appreciate that *Malone* is no longer good law. In *Malone*, the Sixth Circuit remanded an enhanced career offender sentence for reconsideration because the language of the residual clause in the sentencing guideline is identical to the ACCA residual clause that *Johnson v. United States*, 135 S. Ct. 2551 (2015) rendered void for vagueness. *Malone*, 646 F. App'x at 457. The Supreme Court overruled *Malone* when it held that the sentencing guidelines cannot be challenged for vagueness because the guidelines merely guide the district court's discretion. *Beckles v. United States*, 137 S. Ct. 886, 894 (2017).

Marrero's arguments have been fully addressed and resolved both by this Court and the Sixth Circuit. Marrero is not entitled to a sentence reduction because his conviction for aggravated burglary is a crime of violence. Accordingly, Defendant's Motion to Reconsider, **Doc #: 328**, is **DENIED**.

IT IS SO ORDERED.

/s/ Dan Aaron Polster March 4, 2020
DAN AARON POLSTER
UNITED STATES DISTRICT COURT